

REMARKS

In an Office Action dated 14 September 2005, the Examiner rejects claims 1-24 (all pending claims). In response to the Office Action, Applicants amend claims 1 and 12 as well respectfully traverse the rejections. Claims 1-23 remain in the application. In light of the amendments and the following arguments, Applicants respectfully request that this Application be allowed.

The Examiner rejects claims 1 and 12 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number Schnieder et al (Schnieder). To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v. Barient, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, 1768 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988). Moreover, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). The **test for anticipation** is symmetrical to the test for infringement and has been stated as: “That which would literally infringe [a claim] if later in time anticipates if earlier than the date of invention.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1548, 220 U.S.P.Q. 1931, 1938 (Fed. Cir. 1983). The Examiner has not provided a single reference that teaches all of the elements as arranged in claims 1 and 12.

Claim 1 recites that the probe has a proximate and a distal end with a tip on the distal end to inject into tissue. Schnieder does not include a tip for injecting into tissue. Instead, Schnieder teaches a system for testing non-invasive testing of a cable. See Abstract. Applicants have read the entirety of Schnieder and have found no mention of a tip that may be used to penetrate any kind of material. In particular there is no mention

of being able to inject a tip into tissue. Thus, Applicants respectfully request the rejection of claim 1 be removed and claim 1 be allowed.

Claims 2-11 depend from claim 1. Thus, claims 2-11 are allowable for at least the same reasons as claim 1. Therefore, Applicants respectfully request that the rejections of claims 2-11 be removed and claims 2-11 be allowed.


Claim 12 recites a probe system that includes a probe having a tip for injecting into tissue like the probe as recited in claim 1. Thus, claim 12 is allowable for at least the same reasons as stated for claim 1. Thus, Applicants respectfully request that the rejection of claim 12 be removed and claim 12 be allowed.

Claims 13-23 depend from claim 12. Thus, claims 13-23 are allowable for at least the same reasons as claim 12. Therefore, Applicants respectfully request that the rejections of claims 13-23 be removed and claims 13-23 be allowed.

If the Examiner has any questions regarding this application or this response, the Examiner is requested to telephone the undersigned at 775-586-9500.

Respectfully submitted,
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